

## OOI PHAIK CHUAN

v.

## PUBLIC PROSECUTOR

HIGH COURT, ALOR SETAR  
DATO' K.C. VOHRAH J.  
[CRIMINAL APPEAL NO. 52-13-1987]  
17 SEPTEMBER 1992

**CRIMINAL LAW: Charge of corruption - Appeal against conviction.**

**EVIDENCE: Accomplice evidence - Whether conviction on uncorroborated evidence of accomplice safe - Failure of trial judge to warn himself of the danger of convicting on such evidence - Effect - Nature of corroboration required - Whether two accomplices can corroborate each other.**

The appellant was charged and convicted in the Sessions Court on three counts under s. 3(a)(ii) Prevention of Corruption Act 1961.

The appellant appealed against his conviction on the first and second counts on the ground that the trial Judge had convicted him on the uncorroborated evidence of an accomplice and he had not warned himself of the danger of convicting on such uncorroborated evidence. Counsel for the appellant further submitted that there was nothing in the evidence of the witnesses to show that the appellant received the bundle containing RM1,000, the subject matter of the third count.

**Held:**

[1] The witnesses Daud and Hanapiah could be considered as accomplices who according to their evidence aided and procured the commission of the offence by the appellant of corruptly receiving the bribe money. The general rule is that accomplices cannot corroborate each other.

[2] The evidence of Daud was most unreliable and the evidence of the witness Bakar was not strong enough to support the prosecutions' case, it not being of a convincing, cogent and irresistible character.

[3] The evidence of Hanapiah in respect of the third count does not show that the appellant took delivery of the bundle containing RM1,000. In fact from all the evidence that was adduced the clear inference was that it was the OCPD who received the money.

[Appeal allowed].

**a Cases referred to:**

*Mohamed Kassim v. Public Prosecutor* [1981] 2 MLJ 91 (*refd*)

*Public Prosecutor v. You Kong Lai* [1984] 1 CLJ 379 / [1985] 1 MLJ (*refd*)

*The King v. Baskerville* [1916] 2 KB 658 (*refd*)

*Chui Nang Hong v. Public Prosecutor* [1965] 1 MLJ 40 (*refd*)

**b** *Daiman bin Banda v. Public Prosecutor* [1953] MLJ 23 (*refd*)

*Abdul Hamid bin Mohd. v. Public Prosecutor* [1953] MLJ 25 (*refd*)

*Ng Kok Lian and Anor. v. Public Prosecutor* [1983] 2 CLJ 247 / [1983] 2 MLJ 379 (*refd*)

**c** *R v. Thomas Lewis* [1937] 26 Cr. App. R. 110 (*refd*)  
*DPP v. Kilbourne* [1973] 57 Cr. App. R. 381 (*refd*)

**Legislation referred to:**

Arms Act 1960

Criminal Procedure Code, s. 302

Prevention of Corruption Act 1961, ss. 2, 3(a)(i), 3(a)(ii), 18, 26, 30

**d** Prevention of Corruption Ordinance 1950, s. 13(3)

*For the appellant - Choe Kuan Him; M/s. Syarikat Choe*

*For the respondent - Mohtaruddin bin Baki; DPP*

**JUDGMENT****e K.C. Vohrah J:**

There were three charges against Ooi Phaik Chuan in the Sessions Court, Alor Setar under s. 3(a)(ii) of the Prevention of Corruption Act 1961 (the Act).

**f**

The first charge was that on 12 April 1978 he corruptly solicited from one Daud bin Othman for the officer in charge of the Police District of Jitra (the OCPD), Assistant Superintendent of Police Abdul Manaf bin Hashim, a gratification of RM500 as an inducement for the OCPD to refrain from taking further police action against Daud and one Mohd. Hanapiah bin Hasan for an alleged offence under the Arms Act 1960. The charge reads as follows -

**g****h****i**

That you on 12 April 1978, at Kampong Bukit, in the District of Kubang Pasu, in the State of Kedah, did corruptly solicit from one Daud bin Othman for one Abdul Manaf bin Hashim, a gratification, to wit, cash RM500 as an inducement to the said Abdul Manaf bin Hashim a member of a public body, namely an Assistant Superintendent of Police in the Royal Malaysian Police Force, officiating at that time as Ketua Police Daerah Jitra for forbearing to do something in respect of a matter in which the public body is concerned, to wit, refrain from taking further police action against the said Daud bin Othman and

another named Mohd. Hanapiah bin Hasan for an alleged offence under the Arms Act 1960 reported vide Changloon Police Station Report No. 196/78 and that you have thereby committed an offence punishable under s. 3(a)(ii) of the Prevention of Corruption Act, 1961 (Laws of Malaysia Act 57).

The second charge flowed from the first charge. It was to the effect that a day later, on 13 April 1978, Ooi corruptly received for the OCPD a gratification of RM300 from Daud as an inducement for the OCPD to refrain from taking further police action against Daud and Hanapiah under the Arms Act 1960. The charge reads as follows -

That you on 13 April 1978, at about 6.00 p.m. at Kampong Padang Ludap, in the District of Kubang Pasu, in the State of Kedah, did corruptly receive for Ketua Polis Daerah one Abdul Manaf bin Hashim a gratification, to wit, cash RM300 from one Daud bin Othman as an inducement to the said Abdul Manaf bin Hashim who is a member of a public body, to wit, Assistant Superintendent of Police in the Royal Malaysian Police Force, officiating at that time as Ketua Polis Daerah Jitra for forbearing to do something in which the public body is concerned, to wit, refrain from taking further police action against the said Daud bin Othman and another named Mohd. Hanapiah bin Hasan for an alleged offence under the Arms Act, 1960 reported vide Changloon Police Station Report No. 196/78 and that you thereby committed an offence punishable under s. 3(a)(ii) of the Prevention of Corruption Act, 1961 (Laws of Malaysia Act. 57).

The third charge concerned Ooi having corruptly received gratification from Hanapiah for the OCPD some one month later. It was that he corruptly received a sum of RM1000, on 24 May 1978 from Hanapiah as gratification for the said OCPD as an inducement for the OCPD to refrain from taking further police action against Hanapiah and Daud under the Arms Act 1960. The charge reads as follows -

That you on 24 May 1978, at about 9.00 a.m. at Jitra Police Station, in the District of Kubang Pasu, in the State of Kedah, did corruptly receive for one Abdul Manaf bin Hashim a gratification to wit, cash RM1,000 from one Mohd. Hanapiah bin Hasan as an inducement to the said Abdul Manaf bin Hashim, who is a member of a public body, to wit, an Assistant Superintendent of Police in the Royal Malaysian Police Force, officiating at that time as Ketua Polis Daerah Jitra, for forbearing to do something in which the public body is concerned, to wit, refrain from taking further

*a* police action against the said Mohd. Hanapiah bin Hasan and another named Daud bin Othman for an alleged offence under the Arms Act, 1960 reported vide Changloon Police Station Report No. 196/78 and that you have thereby committed an offence punishable under s. 3(a)(ii) of the Prevention of Corruption Act, 1961 (Laws of Malaysia Act 57).

*b* The OCPD, ASP Abdul Manaf bin Hashim, was charged for two offences under the Act connected with the third charge preferred against Ooi. He was charged that on 24 May 1978 he corruptly agreed to receive gratification from Hanapiah through Ooi and that on 24 May 1978 he corruptly received gratification from Hanapiah through Ooi and his (the OCPD's) wife. The wife of the OCPD was charged for one offence, that of receiving gratification from Hanapiah through Ooi on account of her husband, the OCPD, on 24 May 1978. There was a joint trial of all three persons on their several charges. The OCPD was convicted and sentenced on both the charges preferred against him. His appeal has abated under s. 302 of the Criminal Procedure Code by reason of his death. His wife was acquitted at the trial.

*c* Ooi (the appellant) was convicted on all three charges and his appeal is against his conviction on the three charges preferred against him.

*d* It is not disputed that on 9 April 1978 a police team comprising ASP Abdul Manaf (who was then OCPD of Jitra), a police corporal, PW2, and a police driver went to Kampong Wan Perah, Changloon. There PW2 stopped Daud bin Othman (PW11) and seized a shot gun from him. Daud had no licence for the gun. In fact the shot gun belonged to Mohd. Hanapiah bin Hasan (PW10). Daud and Hanapiah were told to report themselves at the Jitra police station the next day. And both Daud and Hanapiah reported themselves as directed at the said police station where they were detained. They were then released on 11 April 1978 on police bail.

*e* It was alleged in evidence that on the afternoon of 10 April 1978, at the police station, the OCPD, reading from a book, told Daud and Hanapiah that it was an offence to carry a shotgun without a licence and that the punishment for it was death by hanging. Reading another section from the book he also said the law provided another punishment which was seven years imprisonment and a fine of RM10,000.

Daud admitted that he tried ways and means to get out from the predicament and that he got in touch with two persons, Lay and May, to ask the appellant to help him as he was aware the appellant knew the OCPD.

In respect of the first and second charges it was the prosecution's case that on 12 April 1978 the appellant went to see Daud in his house and solicited a bribe of RM500 from Daud for the OCPD to settle the gun case against Daud and Hanapiah. And it was alleged that on 13 April 1978 Daud gave a bribe of RM300 to the appellant for the OCPD.

In regard to the third charge the allegation is that the appellant solicited RM1,000 in bribe money from Hanapiah to be paid to the OCPD not to take further action against Hanapiah and Daud and for the police to return the gun to Hanapiah and it is the subject matter of the third charge that the appellant received from Hanapiah RM1,000 for the OCPD in the OCPD's office on 24 May 1978.

#### *First and Second Charges*

I would like to state here that in respect of the first and second charges only the issue of accomplice evidence was raised. There was no argument before me whether on the first and second charges under s. 3(a)(ii) it is incumbent on the prosecution to prove that corrupt money was received as gratification by the OCPD. On the basis of *Mohamed Kassim v. Public Prosecutor* [1981] 2 MLJ 91 it would appear it would have been necessary for the prosecution to have proved that but with *Public Prosecutor v. You Kong Lai* [1985] 1 MLJ it would appear there is no such necessity. Since what I will be deciding as regards the issue of accomplice evidence will determine whether the appeal on the first and second charges will succeed it will not be necessary for me to touch on the issue raised by the two cases.

Counsel for the appellant submitted that Daud was an accomplice in the case and that the learned President of the Sessions Court had convicted the appellant on the first and second charges on the uncorroborated evidence of the accomplice Daud and that he had not warned himself of the danger of convicting the appellant on the uncorroborated evidence of an accomplice. What he submitted is of course not

*a* novel and indeed the corroboration required must be independent testimony which confirms in some material particular not only the evidence that the crime had been committed but also that the accused committed it (*The King v. Baskerville* [1916] 2 KB 658 and *Chui Nang Hong v. Public Prosecutor* [1965] 1 MLJ 40).

*b* It is clear that Daud was an accomplice, because from his evidence he alleged that he did agree to give a bribe and that he gave a bribe to the appellant. Under s. 18 of the Act "no witness shall ... be presumed to be unworthy of credit by reason only of any payment or delivery by him or on his behalf of any gratification to an **agent** or **member** of a **public body**." (Emphasis added). This provision in the Act is a re-enactment of s. 13(3) of the Prevention of Corruption Ordinance, 1950 and I am mindful that both provisions have been judicially considered (see *Daiman bin Banda v. Public Prosecutor* [1953] MLJ 23, *Abdul Hamid bin Mohd v. Public Prosecutor* [1953] MLJ 25, *Ng Kok Lian and Anor. v. Public Prosecutor* [1983] 2 MLJ 379). For our present purposes, however, it will be noted that since Daud purportedly agreed to give and then gave a bribe to the appellant, and the appellant is not "an agent" nor a "member of a public body" as defined under s. 2 of the Act, the court cannot avail itself of s. 18 and say that he is no longer to be presumed unworthy of credit by virtue of the fact that he made an improper payment.

*f* It will be recalled that Daud had stated that he got in touch with two persons, Lay and May, to ask the appellant to help him out of the predicament he was in as he was aware that the appellant knew the OCPD. As a result, the evidence showed, the appellant went to see Daud. It would be naive not to suppose that Daud must have thought that the appellant could act as a go-between for a bribe offer to the OCPD. Daud was certainly an accomplice.

*g* It has to be noted here that the evidence showed that Hanapiah was equally concerned with the outcome of the gun case and his evidence was that he borrowed RM300 to give to Daud to pass over to the appellant. There was a conspiracy on their parts to give bribe money to the appellant. Hanapiah was an accomplice in so far as the first and second charges are concerned.

*i*

That the learned President did not consider that Daud and Hanapiah were accomplices is clear from the record. He said he believed the evidence of Daud and he found (in respect of the first charge) that Hanapiah and PW13 (Bakar bin Daud) bore out the evidence that the appellant solicited the money from Daud. Was the evidence of Daud reliable? Could the President have relied on the evidence of Hanapiah, an accomplice, who also aided and procured the offence? Did the evidence of Bakar bear out Daud's evidence?

Bakar testified that it was on 11 April 1978 that he visited Daud's house and that he met the appellant there having a conversation with the accused. He heard the appellant tell the accused that the OCPD wanted RM500 to settle the case and that if Daud could not raise RM500, he should try to raise RM300 and if he still failed to raise the amount then he should raise RM250 while he would raise the balance.

But Daud's evidence was that Bakar was only present when he spoke to the appellant on 12 April 1978. Was it the prosecution's case that RM500 was solicited on 11 April 1978? That was the evidence of Daud and Bakar and Bakar also said what was solicited was at first RM500, then RM300 and then RM250? If so that is not the date shown in the consent to prosecute the appellant under s. 26(i) of the Act on the first charge. Or was the prosecution's case that RM500 was solicited on 12 April 1978? But the evidence of Daud was that RM500 was first solicited and then RM300.

It has to be pointed out that Daud in another breath also said that when the appellant saw him the second day (that is, 12 April 1978) he had with him RM300 which Hanapiah had given him and the appellant said he would put up the balance of RM200. But Bakar said he saw Hanapiah handing RM300 to Daud on 13 April 1978.

As I see it the evidence of Daud is most unreliable and my view is that the evidence of Bakar is not strong enough to support the prosecution's case; it is not of a convincing cogent and irresistible character (see *R v. Thomas Lewis* [1937] 26 Cr. App. R. 110 at 113). As for Hanapiah the general rule that accomplices cannot corroborate each other should be relied upon as both Daud and Hanapiah can be considered as accomplices who according to their evidence aided and procured the commission of

*a* the offence by the appellant of corruptly receiving the bribe money (see *DPP v. Kilbourne* [1973] 57 Cr. App. R. 381 at 406). In the circumstances the conviction and sentence on the first charge cannot stand and I therefore allow the appeal on the first charge and set aside the conviction and sentence thereon.

*b* As for the second charge there is only the say so of Daud that he passed RM300 to the appellant in a car. There was evidence the borrowed money was passed to him but there was no independent corroboration of his allegation and the learned President had not warned himself of the danger of convicting the appellant on the uncorroborated evidence of an accomplice. I would also allow the appeal on the second charge and set aside the conviction and sentence thereon.

#### *Third Charge*

*d* In regard to the third charge against the appellant the evidence was that Hanapiah met with the appellant on several occasions between 13 April 1978 and 23 May 1978 and complained to him that he had to continue renewing his police bail and that the police had not returned his gun to him. The appellant suggested a bribe of RM1,000 be given to the OCPD. In the meantime officers of the Anti-Corruption Agency (the ACA) kept in touch with him on the matter. On 23 May 1987 the appellant told Hanapiah that the OCPD wanted RM1,000 the next day. And on 24 May 1978 Hanapiah went to see the OCPD with the appellant. Hanapiah brought along RM1,000 provided by the ACA wrapped in a newspaper bundle. After coffee the OCPD asked, "Siap dah kah?" ("Is it ready") Upon hearing that Hanapiah took out the bundle and unwrapped it and exposed the money. He then placed the bundle on the OCPD's table. The appellant pulled the bundle towards himself, wrapped it up and placed it in front of the OCPD. Hanapiah then left the room and later he joined the appellant when the latter came out of the office with the package which was then delivered to the OCPD's wife at his house.

*g* Counsel for the appellant submitted that there is nothing in the evidence of Hanapiah to show that the appellant received the bundle containing RM1,000. I have to agree with that. The evidence of Hanapiah (an *agent provocateur* in respect of his role regarding the third charge) as to what took place in the room of the OCPD

does not show that the appellant took delivery of the bundle containing the RM1,000. The bundle was placed by him on the table and it was for the OCPD and the OCPD was present. It had been left unwrapped on the table. And all that the appellant did was to wrap it up and put it in front of the OCPD. Hanapiah did not hand over the bundle to the appellant and the appellant's mere act of wrapping up the bundle and placing it on the table before the OCPD cannot constitute acceptance of the bundle by him from Hanapiah. That the appellant subsequently delivered the bundle to the OCPD's wife at the OCPD's house cannot be said to be an act that supports the inference that he received the money on behalf of the OCPD at his office. In fact from all the evidence that was adduced the clear inference is that it was the OCPD who received the money. In the circumstances the conviction and sentence on the third charge cannot stand and I therefore allow the appeal on the third charge and set aside the conviction and sentence therein.

In passing I would like to state that I had considered, in the light of the evidence on the third charge by Hanapiah and witnesses from the Anti Corruption Agency and of the defence evidence, whether a conviction could have been had against the appellant for corruptly soliciting from Hanapiah an illegal gratification of RM1,000 on 23 May 1978 for the OCPD to refrain from taking further action against Hanapiah and Daud and for the OCPD to return to Hanapiah his gun under s. 3(a)(i) of the Act; and whether at appeal stage I should substitute a conviction for the offence of his corruptly soliciting a bribe. I am, however, doubtful whether such a course is open to me bearing in mind there is no consent under s. 26 of the Act by the Public Prosecutor to prosecute the appellant for the offence of soliciting a bribe which, on the facts stated by Daud, appears to have been committed by the appellant on 23 May 1978.

To sum up, I allow the appeal on all three charges and I set aside the convictions and sentences thereon. The learned President imposed a penalty on the appellant to pay RM1,500 under s. 30 of the Act. The order is set aside and if the amount has been paid to the court by the appellant it should be refunded.

**ORIENTAL INSURANCE CO. LTD.  
& ANOR.**

**v.**

**MINISTER OF FINANCE**

HIGH COURT, JOHOR BAHRU

DATUK L.C. VOHRAH J.

[ORIGINATING MOTION NO. 25-5-1990]

11 AUGUST 1992

**ADMINISTRATIVE LAW: Application for certiorari - Exercise of discretionary power by the respondent - Section 129 Customs Act 1967 - Whether respondent misdirected himself - Whether exercise of discretion subject to judicial intervention - Whether subjective or objective standard to the applied.**

The applicants made an application to the respondent under s. 129 Customs Act 1967 for the return of a car, which was rejected. The applicants then applied for an order of certiorari to quash the order of the Deputy Minister of Finance, constitutionally exercising the powers of the respondent, rejecting the applicants' application.

The second applicant was the registered owner of the said car and had reported the car stolen on 12 October 1986. On 26 May 1988 the second applicant was informed by the Customs Department that the car had been seized for conveying contraband and on 8 August 1989 the car was forfeited by the Magistrate's Court. The second applicant had subrogated his rights and remedies in respect of the said car to the first applicant after settlement of the second applicant's claim under a policy of insurance.

There was no dispute that the car was in fact stolen and that the second applicant was an innocent party in respect of the commission of the customs offence.

The question for the determination of the court was whether the Deputy Minister had misdirected himself in rejecting the application for delivery of the car by failing to take into account self-evident facts which were favourable to the applicants.

**Held:**

[1] The car was being deliberately withheld even though its ownership was known, contrary to public policy which dictates protection of a person's right to property.